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# Introduction to Brownfields

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In the United States, real property is one of the most valuable economic assets. While this country puts most real property to productive and beneficial use, some properties lie abandoned or idled. These properties, called “brownfields,” may remain unused or underutilized because of actual contamination from past commercial or industrial use; or, because people fear the property’s previous use left contamination. This fear results in relatively clean property remaining idle. Parties that otherwise would redevelop brownfields, therefore, may search out unused property, or “greenfields,” to avoid the potential environmental liability associated with potential clean up.

EPA firmly believes that the cleanup of contaminated property including brownfields, and

## ***Definition of “Brownfields”***

The U.S. Environmental Protection Agency (EPA) defines brownfields as abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.

the clarification of federal cleanup liability, are the building blocks for sustainably recycling previously used property. By fostering the redevelopment of brownfields, EPA is helping to protect greenfields from commercial and industrial development.

EPA recognizes that private parties may believe federal environmental laws and policies have created roadblocks to reusing property. The federal environmental law that most affects the cleanup and reuse of brownfields is the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA (often referred to as Superfund). This law requires EPA to focus its attention on cleaning up the nation's most toxic waste sites in order to protect human health and the environment.

Under CERCLA, the current owner of a contaminated facility may be held liable and responsible for the cost of cleanup. Although potential liability is a valid and serious concern for landowners, it is important to keep this concern within context. For example, the General Accounting Office

### ***The Local Nature of Reuse Projects***

By its very nature, property reuse is a local activity. Parties with the greatest stake in the economic and environmental benefits of a reuse project are the owner(s), surrounding property owners, local citizens, developer(s), local government, and state government. Because of their stake in the project, these parties are generally in the best position to plan, implement, and oversee required cleanup and reuse activities.

EPA believes that there are many issues that affect property reuse; federal environmental liability is only one. After a party has a clear understanding of its federal environmental liability risks and the ways it can minimize them, that party may work primarily or exclusively with state government, local government, and community interests in addressing non-federal issues and planning and implementing its reuse project.

(GAO) estimates the number of potential brownfields at 450,000 sites. Approximately 10% of brownfields are considered for the National Priorities List with less than 1% actually placed. Therefore, at least 99% of potential brownfields across the country will not require federal Superfund action. **Although the existence and applicability of federal environmental laws and regulations could have an impact on development, the reality is that federal action has been taken at a relatively small number of these parcels.**

The relatively small number of sites on the National Priorities List is just one fact illustrating that the federal environmental liability risks associated with brownfields are not nearly as large as one might imagine. Even for risks that could be significant, both Congress and EPA have developed tools that can help parties minimize and manage their risks. This handbook summarizes those tools.

## ***Purpose and Use of This Handbook***

This handbook provides background information on CERCLA and summarizes various statutory provisions and agency regulations, policies, and guidance documents that can be used as tools to manage CERCLA liability risks

### ***Helpful Web Sites***

The following Web sites contain additional information about issues addressed in this handbook:

- Office of Site Remediation Enforcement:  
[www.epa.gov/oeca/osre](http://www.epa.gov/oeca/osre)
- Office of Emergency and Remedial Response:  
[www.epa.gov/oswer/oerr](http://www.epa.gov/oswer/oerr)
- Brownfields:  
[www.epa.gov/brownfields](http://www.epa.gov/brownfields)
- Superfund:  
[www.epa.gov/superfund](http://www.epa.gov/superfund)
- Federal Register:  
[www.nara.gov/fedreg](http://www.nara.gov/fedreg)
- Code of Federal Regulations:  
[www.access.gpo.gov/nara/cfr](http://www.access.gpo.gov/nara/cfr)
- U.S. Code:  
[www.law.house.gov/usc](http://www.law.house.gov/usc)

associated with brownfields and other sites. Designed for use by parties involved in the assessment, cleanup, and reuse of brownfields, this handbook provides a basic description of the purpose, applicability, and provisions of each tool. To gain a more complete understanding of any tool described in this handbook, refer to the relevant reference documents listed in Appendix A. Additional information on related topics can be found on EPA's internet web sites (*see box on page 3*).

Before developing a previously used property, a party should collect and consider information about potential contamination at the property. The next step is to identify which level of government should be consulted regarding cleanup and liability protection, if needed. Most parties will find they can then proceed directly to redevelopment. Others may want to pursue private mechanisms such as indemnification or insurance (*see box*). If the contamination

### ***Private Tools***

Although not addressed in this handbook, various private and state tools can be used to manage environmental liability risks associated with brownfields and other properties. These tools include the following:

- **Indemnification Provisions**-These are private contractual mechanisms in which one party promises to shield another from liability. Indemnification provisions provide prospective buyers, lenders, insurers, and developers with a means of assigning responsibility for cleanup costs, and encourage negotiations between private parties without government involvement.
- **Environmental Insurance Policies**-Under an environmental insurance policy, the insurer promises to compensate the insured party for liability related to environmental contamination of a particular property. Environmental insurance policies help private parties decrease the financial risk of getting involved in brownfields and other properties.

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at the property warrants EPA's attention under CERCLA, the party should determine if EPA is taking or plans to take action at the property. After determining where the property fits in the federal or state cleanup pipeline, a party can use this handbook to determine which tool or tools are most appropriate for helping to manage the party's CERCLA liability risks.